



8 of 15 DOCUMENTS



Cited

As of: Dec 26, 2013

**Margaret B. Lark et al., Appellants, v Leon B. Dematteis Associates, LLC, et al.,
Respondents.**

2872, 102031/05

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST
DEPARTMENT**

**48 A.D.3d 354; 851 N.Y.S.2d 529; 2008 N.Y. App. Div. LEXIS 1600; 2008 NY Slip
Op 1644**

February 26, 2008, Decided

February 26, 2008, Entered

HEADNOTES

Negligence--Maintenance of Premises

COUNSEL: [***1] Franklin Ogele, Newark, NJ, for appellants.

Brill & Associates, P.C., New York (Haydn J. Brill of counsel), for respondents.

JUDGES: Concur--Tom, J.P., Saxe, Friedman, Gonzalez and McGuire, JJ.

OPINION

[*355] [**530] Order, Supreme Court, New York County (Leland DeGrasse, J.), entered March 14, 2007, which, in an action for personal injuries and property damage allegedly caused by toxic mold in an apartment owned by plaintiffs and managed by defendants, granted defendants' motion for summary judgment dismissing the

complaint, unanimously affirmed, without costs.

Defendants' knowledge of a leak in a pipe on the roof of the subject building, which was discovered and remedied eight days before plaintiffs complained about a leak in their bedroom closet and black spots on the wall and floor, did not, as a matter of law, constitute notice of the potential for the mold growth that allegedly caused plaintiffs' injuries (*see Litwack v Plaza Realty Invs., Inc.*, 40 AD3d 250, 835 NYS2d 151 [2007]; *see also Beck v J.J.A. Holding Corp.*, 12 AD3d 238, 785 NYS2d 424 [2004], *lv denied* 4 NY3d 705, 825 NE2d 1093, 792 NYS2d 898 [2005]). There being no other evidence tending to show that defendants created or had notice of the mold hazard, the action was properly dismissed. Furthermore, the record evidence [***2] demonstrates that within days of being notified of the condition, defendants removed the contaminated wall and floor (*cf. Daitech v Naman*, 25 AD3d 458, 807 NYS2d 95 [2006]). Concur--Tom, J.P., Saxe, Friedman, Gonzalez and

48 A.D.3d 354, *355; 851 N.Y.S.2d 529, **530;
2008 N.Y. App. Div. LEXIS 1600, ***2; 2008 NY Slip Op 1644

McGuire, JJ.